

REMARKS

Reconsideration and allowance are respectfully requested.

Claims 98-111, 124-131 and 138-145 were allowed. Claims 117, 137 and 151 were objected to and are amended to address the Examiner's objection.

Claims 112-117, 132-137 and 146-151 were rejected. Claims 116-117, 136-137 and 150-151 are canceled without prejudice or disclaimer. It is noted that the cancellation of these claims does not affect the scope of protection because they are dependent claims that are narrower than the still pending claims from which they depend.

Basis for the amendment of claims 112-114, 132-134 and 146-148 can be found at pages 44-45 of the specification (i.e., Example 3). Amendment of claims 115, 135 and 149 is supported by the description of vegetal milks (see page 3, lines 1-3, of the specification) such as soya or rice milks.

35 U.S.C. 112 – Enablement

The Patent Office has the initial burden to question the enablement provided for the claimed invention. M.P.E.P. § 2164.04, and the cases cited therein. It is incumbent upon the Patent Office, whenever a rejection on this basis is made, to explain why it doubts the truth or accuracy of any statement in a supporting disclosure and to back up assertions of its own with acceptable evidence or reasoning which is inconsistent with the contested statement. *In re Marzocchi*, 169 USPQ 367, 370 (C.C.P.A. 1971). Specific technical reasons are always required. See M.P.E.P. § 2164.04.

Claims 114-117, 134-137 and 148-151 were rejected under Section 112, first paragraph, as allegedly failing to comply with the enablement requirement. It was also alleged that they contain "subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention." Applicant traverses.

The Examiner alleged on page 4 of the Action, "The specification does not disclose any specific examples of functional foods containing proteins produced by the disclosed transgenic plants." This is incorrect. But to expedite prosecution, the limitation "functional food" is deleted from the claims because it is not necessary for patentability.

Extracts and flours containing human lactoferrin can be made from the transgenic plant or its products (e.g., seeds); they may be used in the cooking or baking of foodstuffs. In addition, a vegetal milk (e.g., soya or rice milk) can be produced by grinding seeds and solubilizing/emulsifying their contents into a solution for drinking. As noted above, the disclosure as originally filed described them as made from the transgenic plant or its products. Therefore, claims directed to making extracts, flours, and vegetal milks are added and they should be examined in this application as methods of using the allowed products.

Withdrawal of the enablement rejection made under Section 112, first paragraph, is requested because it would not require undue experimentation for a person of skill in the art to make and use the claimed invention.

35 U.S.C. 112 – Definiteness

Claims 112-113, 132-133 and 146-147 were rejected under Section 112, second paragraph, as being allegedly “indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.” Applicants traverse.

The Examiner’s suggestions for amending the claims to correct informalities are gratefully acknowledged. Adoption of her suggestions in part moots these rejections.

Applicants request withdrawal of the Section 112, second paragraph, rejection because the pending claims are clear and definite.

Double Patenting

Claims 117, 137 and 151 were objected to under 37 CFR 1.75 as being substantial duplicates of claims 108, 128 and 142, respectively. Applicant traverses because the objected claims are canceled.

Withdrawal of the objection is requested.

Conclusion

Having fully responded to all of the pending objections and rejections contained in this Office Action, Applicants submit that the claims are in condition for allowance and

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earnestly solicit an early Notice to that effect. The Examiner is invited to contact the undersigned if any further information is required.

Respectfully submitted,

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